



March 20, 2009

ENGROSSED SENATE BILL No. 182

DIGEST OF SB 182 (Updated March 18, 2009 9:39 am - DI 109)

Citations Affected: IC 10-13; IC 20-19; IC 20-26; IC 20-28.

Synopsis: Criminal history checks. Exempts a postsecondary educational institution from paying a fee for a limited criminal history record of a student in the institution's school of education before the student begins the student's field or classroom experience, but specifies that the student may be required to pay a fee. Requires an expanded criminal history background check for a person seeking employment with a school, and provides that the person is responsible for all costs associated with obtaining the expanded criminal history check. Requires the superintendent of a school corporation, or the equivalent officer for a nonpublic school, to notify the state superintendent when final action is taken against an employee who engaged in certain criminal offenses. Requires the department of education to maintain a searchable database of employees and former employees who have been convicted of certain offenses or subject to final action based on the conviction of certain offenses. Adds possession of child pornography to the list of offenses requiring permanent revocation of teacher's license.

Effective: July 1, 2009; January 1, 2010.

Lubbers, Hershman, Miller

(HOUSE SPONSORS — KERSEY, BARNES, BEHNING, PORTER)

January 7, 2009, read first time and referred to Committee on Judiciary.
February 19, 2009, amended, reported favorably — Do Pass.
February 23, 2009, read second time, ordered engrossed. Engrossed.
February 24, 2009, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 2, 2009, read first time and referred to Committee on Education.
March 19, 2009, reported — Do Pass.

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ES 182—LS 6900/DI 106+



March 20, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 182

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 10-13-3-36, AS AMENDED BY P.L.2-2007,
2 SECTION 147, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2010]: Sec. 36. (a) The department may
4 not charge a fee for responding to a request for the release of a limited
5 criminal history record if the request is made by a nonprofit
6 organization:
7 (1) that has been in existence for at least ten (10) years; and
8 (2) that:
9 (A) has a primary purpose of providing an individual
10 relationship for a child with an adult volunteer if the request
11 is made as part of a background investigation of a prospective
12 adult volunteer for the organization;
13 (B) is a home health agency licensed under IC 16-27-1;
14 (C) is a community mental retardation and other
15 developmental disabilities center (as defined in IC 12-7-2-39);
16 (D) is a supervised group living facility licensed under
17 IC 12-28-5;

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(E) is an area agency on aging designated under IC 12-10-1;
 (F) is a community action agency (as defined in IC 12-14-23-2);
 (G) is the owner or operator of a hospice program licensed under IC 16-25-3; or
 (H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for the release of a limited criminal history record made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division, or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution. The department may not charge a fee for responding to a request for the release of a limited criminal history if the request is made:

- (1) by a state agency; and
- (2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for the release of a limited criminal history record made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

- (1) made through the computer gateway that is administered by the office of technology; and
- (2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

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(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

(1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and

(3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

(g) The department may not charge the school of education of a public or private postsecondary educational institution a fee for responding to a request for the release of a limited criminal history record if the request is made as part of a background investigation of a student before or after the student begins the student's field or classroom experience. However, the department may charge the student a fee for responding to a request for the release of a limited criminal history record.

SECTION 2. IC 20-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. The department shall establish and maintain a searchable data base of information concerning employees and former employees of a school corporation who have been reported to the department under IC 20-28-5-8. The department shall make the data base available to the public.**

SECTION 3. IC 20-26-5-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10. (a) A school corporation, including a school township and a charter school, shall adopt a policy concerning criminal history information for individuals who:**

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

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(b) A school corporation, including a school township **and a charter school**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section ~~may~~ **must** require ~~any of the following: that the school corporation conduct an expanded criminal history check~~

(1) ~~The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.~~

(2) ~~Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request under IC 10-13-3 limited criminal history information or a national criminal history background an expanded criminal history check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for a national criminal history the expanded criminal history background check.~~

(3) ~~Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in IC 10-13-3-11) to the school corporation.~~

(4) ~~Each individual hired for noncertificated employment may be required at the time the individual is hired to:~~

(A) ~~submit a request to the Indiana central repository for limited criminal history information under IC 10-13-3;~~

(B) ~~obtain a copy of the individual's limited criminal history; and~~

(C) ~~submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in IC 10-13-3-7) that does not appear on the limited criminal history.~~

(5) ~~Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's limited expanded criminal history check. The failure to answer honestly questions asked under this subdivision subsection is grounds for termination of the employee's employment.~~

(6) ~~Each individual that:~~

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(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2); (4); and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions (2); (4); and (5), as required by the school corporation, is grounds for termination of the contract. An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible. **The applicant is responsible** for all costs associated with obtaining the limited **expanded** criminal history check.

(d) (c) Information obtained under this section must be used in accordance with ~~IC 10-13-3-29~~ law.

SECTION 4. IC 20-28-1-6.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2010]: **Sec. 6.2. "Expanded criminal history check" means a criminal history background check of an individual that includes:**

(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided during the seven (7) years preceding the date of the background check;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state during the seven (7) years preceding the date of the background check; and

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(C) check of:

- (i) sex offender registries in all fifty (50) states; or
- (ii) the national sex offender registry maintained by the United States Department of Justice; or

(2) a:

- (A) national criminal history background check (as defined in IC 10-13-3-12); and

(B) check of:

- (i) sex offender registries in all fifty (50) states; or
- (ii) the national sex offender registry maintained by the United States Department of Justice.

SECTION 5. IC 20-28-5-8, AS AMENDED BY P.L.151-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

- (1) The state superintendent.
- (2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.
- (3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c), **or when the governing body of a school corporation takes any final action in relation to an employee who engaged in an offense described in subsection (c).**

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

- (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.
- (2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
- (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)

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- 1 years of age.
- 2 (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
- 3 than eighteen (18) years of age.
- 4 (5) Child molesting (IC 35-42-4-3).
- 5 (6) Child exploitation (IC 35-42-4-4(b)).
- 6 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 7 (8) Child solicitation (IC 35-42-4-6).
- 8 (9) Child seduction (IC 35-42-4-7).
- 9 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 10 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
- 11 years of age.
- 12 (12) Dealing in or manufacturing cocaine or a narcotic drug
- 13 (IC 35-48-4-1).
- 14 (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- 15 (14) Dealing in a schedule I, II, or III controlled substance
- 16 (IC 35-48-4-2).
- 17 (15) Dealing in a schedule IV controlled substance
- 18 (IC 35-48-4-3).
- 19 (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 20 (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- 21 (18) Dealing in marijuana, hash oil, or hashish
- 22 (IC 35-48-4-10(b)).
- 23 **(19) Possession of child pornography (IC 35-42-4-4(c)).**
- 24 (d) A license may be suspended by the state superintendent as
- 25 specified in IC 20-28-7-7.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 182, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 18, after "experience." insert **"However, the department may charge the student a fee for responding to a request for the release of a limited criminal history record."**

Page 3, between lines 18 and 19, begin a new paragraph and insert: "SECTION 2. IC 20-19-3-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 9. The department shall establish and maintain a searchable data base of information concerning employees and former employees of a school corporation who have been reported to the department under IC 20-28-5-8. The department shall make the data base available to the public.**

SECTION 3. IC 20-26-5-10, AS ADDED BY P.L.1-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) A school corporation, including a school township **and a charter school**, shall adopt a policy concerning criminal history information for individuals who:

- (1) apply for:
 - (A) employment with the school corporation; or
 - (B) employment with an entity with which the school corporation contracts for services;
- (2) seek to enter into a contract to provide services to the school corporation; or
- (3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a school township **and a charter school**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section ~~may must~~ require ~~any of the following; that~~ **the school corporation conduct an expanded criminal history check**

- (1) ~~The school corporation, including a school township, may request limited criminal history information concerning each applicant for noncertificated employment or certificated employment from a local or state law enforcement agency before or not later than three (3) months after the applicant's employment by the school corporation.~~

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(2) Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation to request ~~under IC 10-13-3~~ **limited criminal history information or a national criminal history background an expanded criminal history** check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation may require the individual to provide a set of fingerprints and pay any fees required for ~~a national criminal history~~ **the expanded criminal history background** check.

(3) Each individual hired for noncertificated employment may be required at the time the individual is hired to submit a certified copy of the individual's limited criminal history (as defined in ~~IC 10-13-3-11~~) to the school corporation.

(4) Each individual hired for noncertificated employment may be required at the time the individual is hired to:

(A) submit a request to the Indiana central repository for limited criminal history information under ~~IC 10-13-3~~;

(B) obtain a copy of the individual's limited criminal history; and

(C) submit to the school corporation the individual's limited criminal history and a document verifying a disposition (as defined in ~~IC 10-13-3-7~~) that does not appear on the limited criminal history.

(5) Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's ~~limited~~ **expanded criminal history check**. The failure to answer honestly questions asked under this ~~subdivision~~ **subsection** is grounds for termination of the employee's employment.

(6) Each individual that:

(A) seeks to enter into a contract to provide services to a school corporation; or

(B) is employed by an entity that seeks to enter into a contract with a school corporation;

may be required at the time the contract is formed to comply with the procedures described in subdivisions (2), (4), and (5). An individual who is employed by an entity that seeks to enter into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program may be required to provide the consent described in subdivision (2) or the information described in

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subdivisions (4) and (5) to either the individual's employer or the school corporation. Failure to comply with subdivisions (2); (4); and (5); as required by the school corporation; is grounds for termination of the contract. An entity that enters into a contract with a school corporation to provide student services in which the entity's employees have direct contact with students in a school based program is allowed to obtain limited criminal history information or a national criminal history background check regarding the entity's applicants or employees in the same manner that a school corporation may obtain the information.

(c) If an individual is required to obtain a limited criminal history under this section, the individual is responsible. **The applicant is responsible** for all costs associated with obtaining the limited expanded criminal history check.

~~(d)~~ (c) Information obtained under this section must be used in accordance with ~~IC 10-13-3-29~~ law."

Page 4, delete lines 3 through 34, begin a new paragraph, and insert: "SECTION 5. IC 20-28-5-8, AS AMENDED BY P.L.151-2006, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

- (1) The state superintendent.
- (2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.
- (3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c), **or when the governing body of a school corporation takes any final action in relation to an employee who engaged in an offense described in subsection (c).**

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the

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department to have been convicted of any of the following felonies:

- (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of age.
- (2) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18) years of age.
- (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.
- (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.
- (5) Child molesting (IC 35-42-4-3).
- (6) Child exploitation (IC 35-42-4-4(b)).
- (7) Vicarious sexual gratification (IC 35-42-4-5).
- (8) Child solicitation (IC 35-42-4-6).
- (9) Child seduction (IC 35-42-4-7).
- (10) Sexual misconduct with a minor (IC 35-42-4-9).
- (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.
- (12) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (13) Dealing in methamphetamine (IC 35-48-4-1.1).
- (14) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (15) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (16) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (17) Dealing in a counterfeit substance (IC 35-48-4-5).
- (18) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10(b)).

(19) Possession of child pornography (IC 35-42-4-4(c)).

(d) A license may be suspended by the state superintendent as specified in IC 20-28-7-7."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 182 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 0.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred Senate Bill 182, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

PORTER, Chair

Committee Vote: yeas 11, nays 0.

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